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08/529,044	09/15/95	ECKHOUSE	S 86134/114

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EXAMINER	
WINAKUR, E	
ART UNIT	PAPER NUMBER
3311	10

DATE MAILED: 11/28/97

**Please find below a communication from the EXAMINER in charge of this application.**

Commissioner of Patents

# Office Action Summary

Application No.  
08/529,044

Applicant(s)

Eckhouse et al.

Examiner

Eric Winakur

Group Art Unit

3311

☒ Responsive to communication(s) filed on Aug 11, 1997

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-19, 21-43, and 45-47 is/are pending in the application

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☒ Claim(s) 39-43 and 45-47 is/are allowed.

☒ Claim(s) 1-13, 17-19, 21-25, 30-33, 37, and 38 is/are rejected.

☒ Claim(s) 14-16, 26-29, and 34-36 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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1. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 29, the term "the" should be inserted before "means" (line 3).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 - 4, 10, 11, 21, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Sand. Sand teaches a method for collagen treatment that includes optically illuminating a treatment area with laser radiation to achieve collagen shrinkage. The pulse duration and surface temperatures are controlled to provide collagen shrinkage without damage to adjacent layers. Sand teaches that the invention has applications throughout the body (column 1, lines 66 - 68), including cosmetic surgery (column 9, lines 1 - 3).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 - 9, 12, 13, 17 - 19, 23, 25, 30 - 33, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand as applied to claims 1 - 4, 10, 11, 21, 22, and 24 above. Sand

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teaches all of the features of the claimed invention except the use of Nd:YAG and ruby lasers, light guides, the specific substances set forth in claims 5 - 9 and 23, and the specific structure of the laser and housing.

Without a showing of unexpected results or criticality it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Sand to use a Nd:YAG or ruby laser since it has generally been held to be within the skill level of the art to substitute equivalent elements in a device. Further, it would have been obvious to use light guides to deliver light from a light source to a treatment area since it was well known in the art to use light guides for delivery of optical treatments.

Sand teaches that cooling is achieved using a liquid or a gas, but does not teach the specific substances set forth in the claims. One of ordinary skill in the art at the time of the invention would recognize that the list of substances recited in Sand was not exhaustive and would further recognize that it would have been obvious to implement the method of Sand with any substance that would meet the cooling requirements of the system.

Although Sand does not teach the specific structure of the treatment system, it would have been obvious to one of ordinary skill in the art at the time of the invention to dispose the laser and control elements in a housing to provide protection to those elements and to make the unit more transportable.

6. Claims 39 - 43, and 45 - 47 are allowed.

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7. Claims 14 - 16, 26 - 28, and 34 - 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claim 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Knowlton teaches a method and apparatus for controlled contraction of collagen tissue. Slatkine teaches a laser facial rejuvenation system that uses a carbon dioxide laser to perform the treatment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Winakur whose telephone number is (703) 308 - 3940. The examiner can normally be reached on Monday - Thursday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Bahr, can be reached on (703) 308- 1066. The fax phone number for this Group is (703) 308 - 3139.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [jennifer.bahr@uspto.gov].

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All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308 - 0858.

Eric F. Winakur  
November 20, 1997

  
JENNIFER BAHR  
PRIMARY EXAMINER  
GROUP 3300